



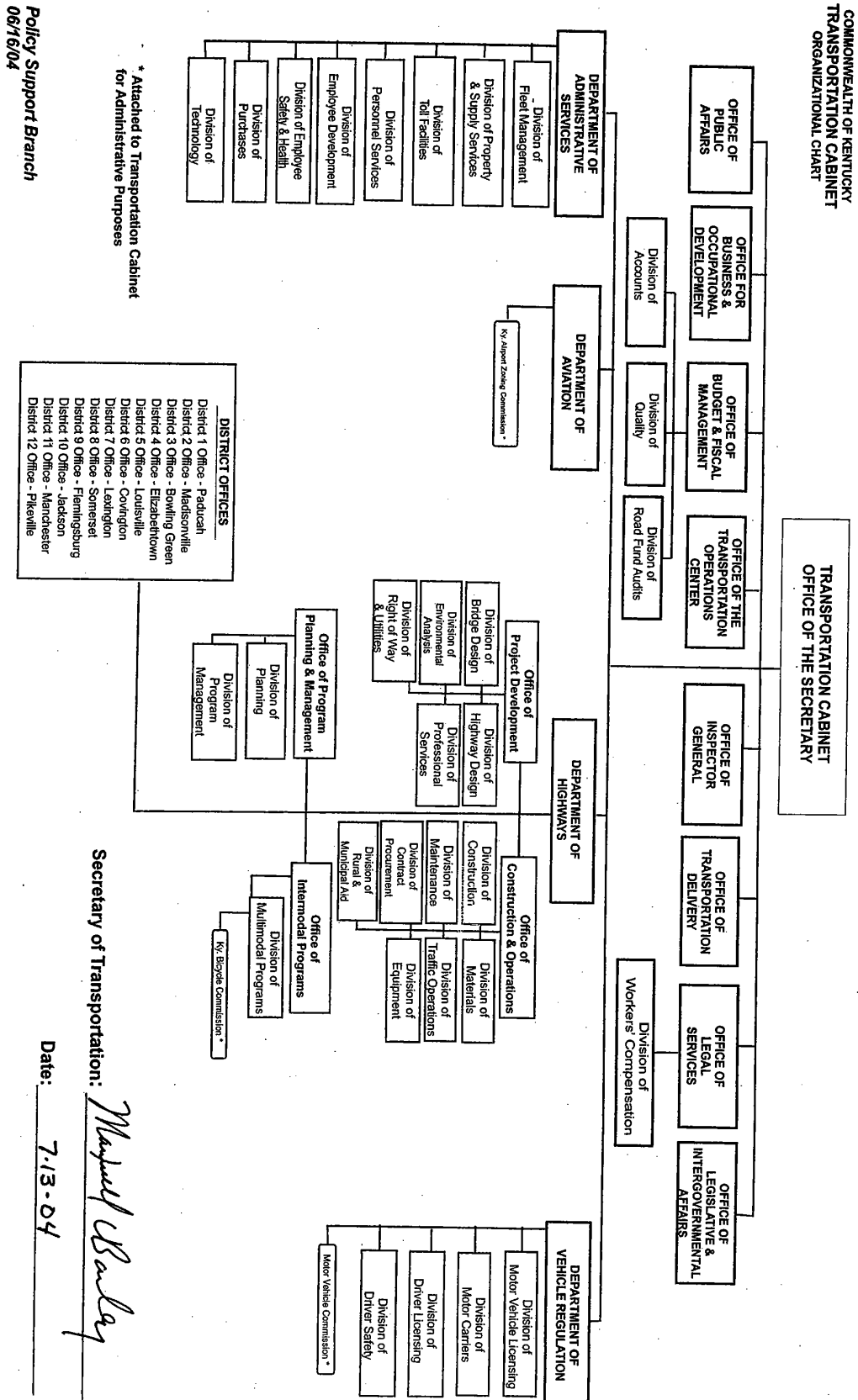
## **AFFIRMATIVE ACTION PLAN**

[April 1, 2004 - March 31, 2007]

*Maxwell C. Bailey, Transportation Cabinet Secretary  
Arthur McKee, Jr., Executive Director  
Alvin Q. Wilson, EEO Coordinator  
Office for Business and Occupational Development*

*Rev. 07/15/04*

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
ORGANIZATIONAL CHART



\* Attached to Transportation Cabinet  
for Administrative Purposes

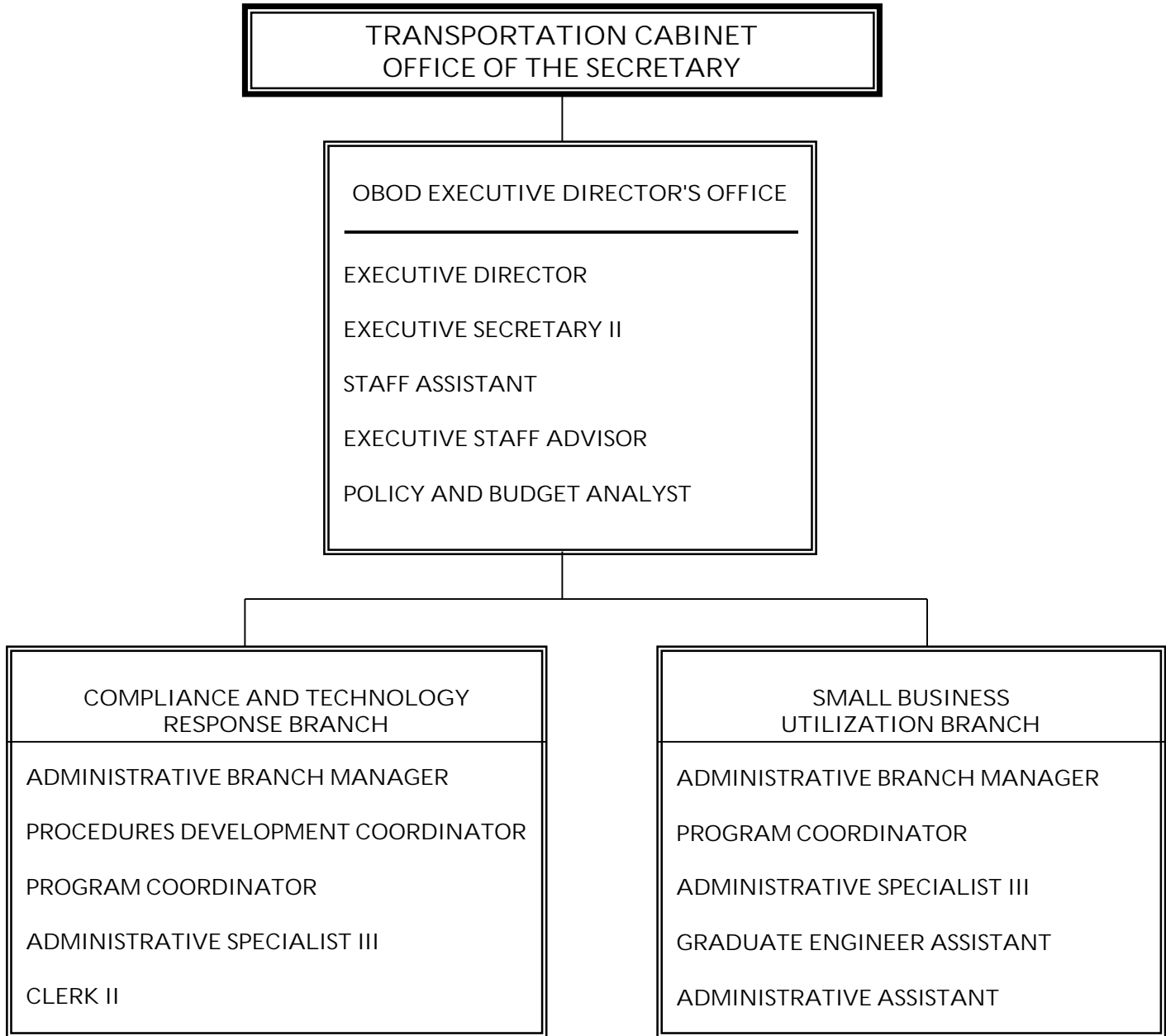
Policy Support Branch  
06/16/04

Secretary of Transportation:

*Maynard Barclay*

Date: 7.13.04

OFFICE FOR BUSINESS AND OCCUPATIONAL DEVELOPMENT  
(OBOD) ORGANIZATIONAL CHART



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**NOTE\*** - Effective June 2004, there has been a reorganization in the Transportation Cabinet, therefore, the Office of Minority Affairs (OMA) [renamed the Office of Business and Occupational Development (OBOD)] and the Department of Human Resource Management (DHRM) [renamed the Department of Administrative Services, Division of Personnel Services] are referenced in these policy statements and procedures for Fiscal Year 2004.

New policy statements and procedures will reflect the new departmental names.

## **INTRODUCTION**

The Kentucky Transportation Cabinet's (Cabinet) internal Equal Employment Opportunity (EEO) program is an integral part of the Cabinet's daily operation. The EEO program includes this Affirmative Action Plan Update (AAP) that covers every element of the Cabinet's personnel management policies and practices.

The Cabinet's AAP has been developed in accordance with Executive Order 11246, the Kentucky State Government Affirmative Action Plan and Federal Highway Administration (FHWA) program requirements.

Executive Order 11246 issued September 24, 1965 provides anti-discrimination provisions for federal agencies and government contractors receiving \$10,000 or more in federal funds. Discrimination on the basis of race, color, religion, sex, disability, veteran status or national origin is prohibited in all employment activities. Affirmative action plans are required to those having 50 or more employees with contracts of more than \$50,000. The Order established the Office of Federal Contract Compliance (OFCC) under the Department of Labor as an enforcement agency.

The AAP affirms the Cabinet's commitment to non-discrimination and EEO. The purpose of the AAP is to ensure that all Cabinet employees and applicants for employment are afforded equal employment opportunities.

### **Purpose of AAP**

The goals for participation of minorities and females in the Kentucky State Government workforce are established by the Executive Branch. Kentucky has established a statewide female goal of 52.42 and 10.00 percent minority goal with an emphasis that 7.50 percent will be African-Americans.

The Cabinet has not reached the established goals for females and minorities. Cabinet personnel data reveal that at the close of Federal Fiscal Year (FFY) 2003, there were 5,573 Cabinet employees. There were 386 (06.96 percent) minority employees and 1,082 (19.42 percent) female employees with the Cabinet.

In FFY 2003 the Cabinet hired 470 employees. There were 105 (22.34 percent) females and 24 (05.10 percent) minority employees hired. This rate of hire does not meet the pace needed to reach the established goals for female and minority participation in the Cabinet's workforce.

The Cabinet workforce is categorized into eight job classifications: Officials and Administrators; Professionals; Technicians; Protective Service; Para-Professional; Administrative Support; Skilled Craft and Service Maintenance. The most recent AAP Update and EEO-4 Report reflect seven (7) out of eight (8) job categories are underrepresented by minorities and females.

The AAP establishes a three-year plan with goals, action items and target dates designed to increase the participation rate of females and minorities in the Cabinet's workforce. Targeted areas include the identification and removal of barriers to hiring and promoting targeted populations as well as strategies for increasing the quantity and quality of the pool of applicants for employment and promotions in the Cabinet.

#### Administration and Implementation

The Cabinet Secretary is the person primarily responsible for the overall administration of the Cabinet's EEO program. The Cabinet Secretary has delegated responsibilities for the overall development and implementation of its EEO/Affirmative Action (EEO/AA) programs to the Office of Business and Occupational Development (OBOD). The OBOD Executive Director is the Cabinet's full-time Affirmative Action Officer and serves as principal staff advisor to the Cabinet Secretary on EEO/AA programs. The Affirmative Action Officer has the responsibility and authority to implement the internal EEO program.

The OBOD Executive Director delegated the responsibility and authority of managing and monitoring the Cabinet's internal EEO program to a full-time administrative branch manager, the EEO Coordinator. His responsibilities include:

- § developing the written AAP; publicizing its content internally and externally.
- § identifying problem areas, setting goals and timetables and developing programs to achieve goals;
- § handling and processing formal discrimination complaints; and
- § designing, implementing and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed.

The OBOD provides centralized leadership, coordination, monitoring, assessment and evaluation of Cabinet-wide EEO activities. It develops EEO policies and procedures with management personnel, employees and applicants. The OBOD Executive Director participates in senior staff meetings and planning sessions where significant management issues, staffing plans and other vital information are discussed. Management personnel rely on the OBOD for assistance in resolving problems, which impact upon the Cabinet's progress toward EEO goals and objectives.

### Action Statement

It is the challenge and charge of the OBOD to take the lead in conveying directly to the Cabinet Secretary that a strong AAP will create a diverse and stronger workforce during the next three (3) years.

.In an effort to improve and transform these identified under-represented categories to meet the state's goal, the following action activities for the next three (3) years will show support in promoting a fair and equitable workplace.

In accordance with FHWA's civil rights reporting requirements the OBOD will provide the following:

- § Quarterly AAP Update.
- § AAP Update by May 1.
- § Title VI Plan, Accomplishments and Goals by June 15.
- § State Employment Practice Report (EEO-4) by August 1.

## OBJECTIVES AND ACTION ITEMS

Element:	<b>Appointments</b>
Problem/Barrier Statement:	Minorities and females are under-represented in seven of eight EEO job categories.
Objective:	To increase minority and female representation in the work force. Special emphasis will be placed on engineering and professional categories.
Responsible Officials:	Cabinet Secretary Department of Administrative Services (DAS) Office of Business and Occupational Development (OBOD) Division/Office Chiefs

### **Action Items**

1. Strive to increase minority employment numbers one percent (1%) annually for the next three years to reach the goal of 10 percent (10%) statewide minority workforce composition. Report the progress toward meeting the State's AAP for minority goal to the Governor's Office, State Commissioner of Personnel and the Cabinet Secretary

Target Date: Quarterly, 1 to 3 years

2. Develop strategies which ensures that all qualified employees, including women and minorities, are afforded equal opportunity when considerations are made for developmental assignments.

Target Date: Quarterly

3. Report the progress toward meeting the State's AAP for female 52.42 percent goal to the Governor's Office, State Commissioner of Personnel and the Cabinet Secretary.

Target Date: Quarterly

4. Facilitate and conduct comprehensive training for EEO counselors in the district offices.

Target Date: December 30, 2004

5. Review all selection criteria for Cabinet programs to eliminate unnecessary criteria that may have a disproportionate impact on women and minorities.

Target Date: September 30, 2004



6. Utilize interns, co-ops and developmental positions whenever possible to attract entry level candidates.

Target Date: Semi-annually

7. Conduct a study of current recruitment methods to further identify problem areas and formulate recommendations delineating necessary action.

Target Date: September 30, 2004

8. Work cooperatively with the Cabinet's scholarship coordinator, State universities, community colleges and vocational schools to recruit minority and female candidates for the Cabinet's Engineering Scholarship Program and other professional positions within the Cabinet.

Target Date: Quarterly

9. Maintain and monitor historical data and statistical reports of the Cabinet's trends and patterns for appointments to identify any disparity and unfair treatment.

Target Date: Monthly

Program Element:	<b>Promotions</b>
Problem/Barrier Statement:	Low promotion rate of minority employees, including representation in senior management and supervisory positions.
Objective:	To increase the promotion rate of minority employees.
Responsible Officials:	Cabinet Secretary Department of Administrative Services (DAS) Office of Business and Occupational Development (OBOD) Division/Office Chiefs

### **Action Items**

1. The Cabinet Secretary will issue a memorandum to management personnel, reasserting Cabinet's obligation to equal employment opportunity (EEO).  
  
Target Date: September 30, 2004
2. Target specific, underutilized job classifications to encourage upward mobility of minority and female employees.  
  
Target Date: September 30, 2004
3. Continue to coordinate and provide career counseling for minority and female employees.  
  
Target Date: Monthly
4. Continue to train supervisory personnel in managing cultural diversity. This training acts to diffuse potential personnel problems.  
  
Target Date: Annually
5. Utilize the Governor's Minority Management Trainee Program (GMMTP) to the fullest extent.  
  
Target Date: Every two years
6. Identify bilingual employees to assist in its recruitment efforts.  
  
Target Date: Annually

7. Share notifications of vacancies with those organizations that have heavy/frequent contact with targeted populations.

Target Date: Monthly

8. Analyze promotions to discern if any particular work unit(s) has a high rejection rate of minority and female candidates for promotions and offer appropriate recommendations when necessary.

Target Date: Quarterly

9. Maintain and monitor historical data and statistical reports of the Cabinet's trends and patterns for promotion to identify any disparity and unfair treatment.

Target Date: Monthly

Program Element: **Demotions, Suspensions and Terminations**

Problem/Barrier Statement: The continued high suspension and dismissal rates.

Objective: To monitor and decrease suspension and dismissal rates.

Responsible Officials: Cabinet Secretary  
Department of Administrative Services (DAS)  
Office of Business and Occupational Development (OBOD)  
Division/Office Chiefs

**Action Item**

1. Identify through personnel reports locations of high rates of suspensions and dismissals. Once identified OBOD will:
  - A. Identify and assess the job categories of the underutilized areas and develop a methodology for monthly monitoring and reviews of the hiring and promotions of women and minorities.
  - B. Analyze the effectiveness of the current process for hiring and promoting to ensure that the women and minorities are fostered for career development.
  - C. Maintain and monitor historical data and statistical reports of the Cabinet's trends and patterns for disciplinary actions, terminations, demotions, and suspensions identify ant disparity and unfair treatment.
  - D. Conduct interviews with Cabinet's senior management to inform them of the current condition of the Cabinet workforce and solicit their input for improving these underutilized areas of women and minorities.
  - E. Review disciplinary process with the appropriate management personnel.
  - F. Provide assistance to supervisory personnel relative to communication with problem prone employees.
  - G. Contact employees personally to offer counsel. (Those with first offense actions.)

Target Date: October 30, 2004

2. Continue to utilize exit interviews to pinpoint problem areas.

Target Date: Quarterly

3. Continue to provide assistance to problem prone employees.  
(Those with repeated disciplinary actions.)

Target Date: Monthly

## Staffing

The OBOD is located in the Transportation Cabinet Office Building, 6<sup>th</sup> floor West Wing, 200 Mero Street, Frankfort, Kentucky. The Compliance and Technology Response Branch EEO staff is composed of an Administrative Branch Manager and a professional staff.

Each of the twelve highway districts has an employee assigned to coordinate EEO/AA activities on the district level. These individuals provide necessary reports of activities upon request and status to the EEO Coordinator. The EEO Coordinator is immediately notified of problem situations.

The Cabinet has a full-time Americans with Disabilities Act (ADA) Coordinator who is responsible for ensuring that the Cabinet is in compliance with the ADA and assisting employees who need accommodations under the ADA. The ADA Coordinator confers with Cabinet managers and employees concerning their rights and responsibilities under the ADA. There are also ADA advisors in each of the twelve highway districts who offer assistance in ADA-related matters to employees under the auspice of the Cabinet ADA Coordinator. A plan will be developed to address the requirements of the ADA Act and will be a supplement to this AAP. This plan will be submitted in six months.

The Cabinet employs a full-time recruitment manager. This manager works in the Department of Administrative Services (DAS), Division of Personnel Services (DPS). Recruitment activities are designed to reach and attract job candidates from all segments of the population. Where appropriate, these activities are tailored to improve their effectiveness among members of specific groups.



ERNIE FLETCHER  
GOVERNOR

KENTUCKY TRANSPORTATION CABINET  
FRANKFORT, KENTUCKY 40622  
WWW.KENTUCKY.GOV

MAXWELL C. BAILEY  
SECRETARY

### ***EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT***

*It is the policy of the Kentucky Transportation Cabinet (Cabinet) to assure equal employment opportunities to all persons. All Cabinet employees shall be treated impartially and without regard to race, color, religion, national origin, sex, age or disability in all aspects of employment, including but not limited to hiring, rates of pay or other forms of compensation, upgrading, demotion or transfer, disciplinary actions, layoff, termination and selection for training programs within the Cabinet.*

*The Cabinet policy further prohibits discrimination and harassing behavior on account of race, color, sex, religion, national origin, age or disability status.*

*The Cabinet also maintains the same impartial and nondiscriminatory policy in the selection of persons, firms or businesses that perform business with the Cabinet.*

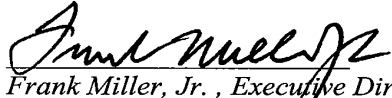
*Management personnel shall be responsible to ensure this policy is announced and adhered to throughout this agency.*


*Employees or applicants for employment seeking assistance in these matters may contact the Office of Minority Affairs.*

*Retaliatory action of any kind is prohibited and will be regarded as a separate and distinct cause for complaint.*

Signed and approved this 28 day of April, 2004.

APPROVED AS TO FORM  
AND LEGALITY

  
Frank Miller, Jr., Executive Director  
Office of Legal Services

  
Maxwell C. Bailey, Secretary  
Kentucky Transportation Cabinet

I have read this policy statement and understand the provisions contained within and acknowledge the receipt of this policy.

Signature

Date

Social Security Number



ERNIE FLETCHER  
GOVERNOR

KENTUCKY TRANSPORTATION CABINET  
FRANKFORT, KENTUCKY 40622  
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MAXWELL C. BAILEY  
SECRETARY

### ***SEXUAL HARASSMENT POLICY AND PROCEDURE***

*Sexual harassment of any kind will not be tolerated in the Kentucky Transportation Cabinet (Cabinet). Sexual harassment is defined as a continuing pattern of unwelcome sexual advances, requests for sexual favors or physical contact of a sexual nature under any of these conditions:*

- 1. When submission to the conduct involves a condition of the individual's employment.*
- 2. Submission or refusal of such conduct is used as a basis for employment decisions.*
- 3. The conduct unreasonably interferes with the individual's job performance or creates a work environment that is intimidating, hostile or offensive.*

*It is the responsibility of each employee to understand and abide by this policy. Any person who is found by the Cabinet to have sexually harassed another employee is subject to appropriate disciplinary action, including termination. The Cabinet provides sexual harassment awareness training and requires all employees to attend these sessions.*

*Any employee who believes that he/she is a victim of sexual harassment should report the matter to their immediate supervisor and/or District Administrative Manager, Department of Human Resources Management, and/or the Office of Minority Affairs. A report need not be in writing, but must contain sufficient detail to permit an investigation of incidents. All information reported will be held in strictest confidence and will only be disclosed on a need-to-know basis in order to investigate and resolve the matter. The alleged harasser will be informed of the complaint and given an opportunity to respond to the allegations.*

*Retaliatory action of any kind is prohibited and will be regarded as a separate and distinct cause for complaint. Signed and approved this 28 day of April, 2004.*

*Maxwell C. Bailey*  
Maxwell C. Bailey, Secretary  
Kentucky Transportation Cabinet

APPROVED AS TO FORM  
AND LEGALITY

*Frank Miller, Jr.*  
Frank Miller, Jr., Executive Director  
Office of Legal Services

I have read this policy statement and understand the provisions contained within and acknowledge the receipt of this policy.

Signature

Date

Social Security Number

An Equal Opportunity Employer M/F/D





KENTUCKY TRANSPORTATION CABINET  
FRANKFORT, KENTUCKY 40622  
WWW.KENTUCKY.GOV

ERNIE FLETCHER  
GOVERNOR

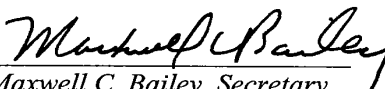
MAXWELL C. BAILEY  
SECRETARY

## ***TITLE VI POLICY STATEMENT***

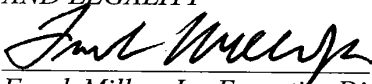
*It is the policy of the Kentucky Transportation Cabinet to afford equal opportunity to all persons to the end that no person in the United States shall, on the grounds of race, color, sex, disability, age or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U. S. Department of Transportation.*

*Programs and activities to which this policy applies include, but are not limited to, the use of grants in connection with federal-aid highway systems, the Surface Transportation and Relocation Assistance Act of 1987, the Highway Safety Act of 1966, and the National Traffic and Motor Vehicle Safety Act of 1966, leases of real property and the grant of permits, licenses, easements and rights of way covering real property, Urban Mass Transportation Research Programs, and other grants for the support of basic scientific research.*

Signed and approved this 28 day of April, 2004.

  
Maxwell C. Bailey, Secretary  
Kentucky Transportation Cabinet

APPROVED AS TO FORM  
AND LEGALITY

  
Frank Miller, Jr., Executive Director  
Office of Legal Services

I have read this policy statement and understand the provisions contained within and acknowledge the receipt of this policy.

Signature

Date

Social Security Number

## **DISCRIMINATION COMPLAINT PROCEDURES**

**TRANSPORTATION CABINET  
OFFICE OF MINORITY AFFAIRS  
INVESTIGATION OF INTERNAL DISCRIMINATION COMPLAINTS**

Introduction

The Kentucky Transportation Cabinet (Cabinet) is committed to being an equal employment opportunity (EEO) agency. As such, the Cabinet has pledged to swiftly and affirmatively eliminate any discrimination that may exist. These EEO complaint procedures provide for prompt and equitable resolution for complaints alleging unlawful discrimination.

Authority

These EEO complaint investigation procedures have been developed pursuant to Title VII of the Civil Rights Act of 1964; Executive Order 11246 as amended in Executive Order 11375; the Age Discrimination in Employment Act; the Equal Pay Act of 1963; Section 504 of the Rehabilitation Act of 1973; the Kentucky Civil Rights Act; the Federal-Aid Highway Act: Title 23 CFR, 230, Subpart C, App. A, (B) (11); Vietnam Era Veteran's Readjustment Assistance Act of 1974; KRS Chapter 18A and other pertinent statutes and regulations. These procedures are not intended to duplicate or circumvent other available options.

I. DEFINITIONS

- (1) **Equal Employment Opportunity (EEO)** - Equal access to all available jobs and training, under equal terms and conditions, and with equal benefits and services, without differentiation on the basis of race, color, national, origin, sex, age (over 40), religion or disability.
- (2) **Employment Discrimination** - An employment practice or action which denies equal treatment or opportunity to an individual or group of individuals, as compared to others similarly situated, based on race, color, sex, (the basis "sex" is inclusive of sexual harassment complaints), religion, national origin, Vietnam veteran status or age (over 40).
- (3) **Cabinet EEO Coordinator** - The manager of Cabinet's EEO/Affirmative Action programs is designated the EEO Coordinator. Contact Alvin Wilson, Office of Minority Affairs (OMA).
- (4) **EEO Counselor** - Counselors include Highway District Administrative Managers, OMA staff, Department of Human Resources Management (DHRM) staff, and designated district personnel. They are knowledgeable of the complaint procedure and other available options and serve an open channel through which employees and applicants for employment may raise questions and get answers to problems connected with EEO.

- (5) **Applicant** - An individual not employed by the Cabinet, who formally applies for employment with the Cabinet.
- (6) **Complaint** - The Cabinet EEO complaint procedures utilize a three-step review process. A complaint is developed in the sequential order outlined below. An individual has 60 days from the date of incident occurrence to pursue a complaint.
  - (a) *Inquiry* is the first step of complaint development. It consists of Information gathering, review and clarification to determine the appropriate way to swiftly resolve allegations of discrimination. At this level of the complaint process, an individual discusses issues in confidential counseling with EEO staff. The inquiry is not discussed with other parties. If resolution does not occur, the individual may opt to proceed to the next step.
  - (b) *Informal complaint* is the second step of complaint development. This second step acts as an alternative to formalized proceedings and involves discussion with individuals other than complainant. Assistance is provided without initiating a full-blown investigation. If resolution does not occur at this level, the individual may opt to proceed to the next step.
  - (c) *Formal complaint* is the final step in the complaint development process. At this step, the complainant notifies the Cabinet EEO Coordinator of alleged discrimination. The allegations are defined in a statement written and signed by the complainant. A detailed investigation is conducted and a summary report of findings is issued to complainant and accused. When appropriate, a summary report is forwarded to the Cabinet Secretary or his designee and the Cabinet appointing authority.
- (7) **Complainant** - An employee of the Cabinet or applicant who formally files an employment discrimination complaint in accordance with the authorities listed above.
- (8) **Grievance** - 101 KAR 1:375 allows a state employee to file a grievance that alleges discrimination on the basis of race, color, religion, national origin, sex, disability or age (over 40). The recipient of such grievance is to immediately notify the Cabinet EEO Coordinator in order to comply with Kentucky's Affirmative Action Plan.
- (9) **Confidentiality** - Investigation will be conducted as confidentially as possible to protect the privacy and due process rights of both the complainant and the individual accused. Consultation with others will be strictly limited to those who may have information about the alleged incident.

- (10) **Equal Employment Opportunity Commission (EEOC)** - The federal agency with jurisdiction to investigate and resolve complaint of discrimination. An individual must file a written complaint within 30 days of the alleged discriminatory incident.
- (11) **Kentucky Commission on Human Rights (KCHR)** - The state agency with jurisdiction to investigate and resolve complaints of discrimination. An individual must file a written complaint within 180 days of the alleged discriminatory incident.
- (12) **Remedy** - Specific actions used as a means of resolving formal and informal complaints of discrimination.
- (13) **Recommended Determination** - When a formal investigation is completed, the EEO Coordinator shall offer a recommendation to the agency head or his designee as to whether or not the alleged discrimination contained in the complaint can be verified.
- (14) **Retaliation** - The act of discriminating against a person because the individual filed an employment discrimination complaint, or assisted or participated in any manner in a proceeding initiated pursuant to this procedure.
- (15) **Sexual Harassment** - Unwelcome sexual advances, requests for sexual favors, and other written, verbal or physical conduct of a sexual nature constitutes sexual harassment when:
  - (a) submission to such conduct is made either explicitly or implicitly a term or condition of employment,
  - (b) submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual,
  - (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment is inclusive of unwelcome heterosexual and homosexual advance. The Cabinet's responsibilities also extend to sexual harassment of Cabinet employees within the work place by outside agents, vendors, contractors, and other non-employees, when the employer knows or should have known of the conduct, and failed to take immediate corrective action.
- (16) **Withdrawal** - An action taken by the complainant to dismiss his/her complaint. To be effective, the request for withdrawal must be enacted by the complainant without coercion or fear of retaliation.

## II. PURPOSE

The Cabinet EEO complaint procedures establish the process for the filing, investigation and resolution of employment discrimination complaints and inquiries. These procedures also:

- (1) Assure that any employee or applicant for employment shall be afforded an immediate and fair method for the resolution of discrimination complaints. The Cabinet's experience has been that the majority of individuals seek earnest resolution to incidents of discrimination. However, the Cabinet will impose penalties for malicious or false accusations.
- (2) Provide the opportunity for employees to informally and confidentially discuss individual allegations of unlawful discrimination.
- (3) Encourage in-house resolution of alleged discrimination complaints.
- (4) Provide a mechanism to ensure that aggrieved individuals may pursue resolution free from interference, coercion, reprisal or any other form of retaliation. Any employee who participates in these procedures may do so without fear of retaliation. Retaliatory action of any kind is prohibited and will be regarded as a separate and distinct cause for complaint. It is made clear that interference, coercion, reprisal or other intimidation against an employee who has participated in the discrimination complaint process will result in disciplinary action against the responsible individual(s).

## III. COMPLAINT PROCEDURES

- (1) An inquiry is the first step in complaint development. An individual can discuss allegations, have questions answered and decide on a course of action in confidential counseling with EEO staff. This information gathering and clarification process is neither a formal nor informal complaint, and is not discussed with any other parties. The individual can opt to continue in the complaint process if issues are not resolved. This inquiry phase is completed **within one to ten working days.**
- (2) The informal complaint process is the second step in complaint development and provides maximum privacy and an opportunity for the earliest possible resolution for everyone concerned. The OMA staff serves as chief counselors and investigators for the Cabinet. Each district have designated EEO counselors. The Highway District Administrative Manager and the DHRM are also available to receive a complaint and forward it to the OMA. Any employee or applicant for employment who wishes to pursue informal resolution may contact the personnel identified above. When the complainant chooses to explore an informal resolution, assistance can be provided without fully investigating the allegation.

A complaint should contact a counselor **within 60 days of the alleged discriminatory occurrence**. For purposes of notification, this complaint may be written or oral. The OMA maintains a written record of all complaints. Attempts to resolve an informal complaint will be completed within 30 days from the date of the complaint. The EEO counselor will keep the complainant informed of the progress toward resolution. At each opportunity the staff will seek an informal resolution that is satisfactory to the parties concerned. If the matter is not resolved, the employee will be apprised of all other available options. The complainant and the person accused will be notified in writing of the outcome of the informal process **within ten working days of resolution**.

- (3) A formal complaint is the final step in the complaint process. The complainant has **10 working days from receipt of written notification** to notify the Cabinet EEO Coordinator of intent to file a formal complaint.

A complainant may contact the EEO Coordinator either in person, in writing or by telephone. However, before officially beginning a formal investigation, the complainant must prepare and sign a statement of complaint. This statement shall include the complaint's basis (race, color, sex, etc.), issues (equal pay, failure to promote, etc.), incident dates, identity of the accused, and names of supporting witnesses. The EEO staff can provide technical assistance when necessary.

#### Formal Complaint Investigation

- (a) Within 10 working days after receipt of complaint, the EEO Coordinator will send a letter to the complainant's home address acknowledging receipt of the complaint, requesting any additional information and identifying the investigator assigned to the complaint. In the formal complaint process, OMA EEO and staff designated by the OPM share investigatory responsibility.
- (b) The assigned investigator will notify the director, of the affected work unit, of the complaint investigation.
- (c) The investigator will inform all accused parties of the factual allegations and give them an opportunity to respond. At this time, the accused may provide supporting witnesses, documentation and other relevant material.
- (d) The investigator will conduct interviews with complainant, accused and all witnesses regarding information relevant to the complaint.
- (e) The investigator may also:

Collect and tabulate personnel data relative to the complaint (i.e. timesheets, application, disciplinary actions, etc.) in order to provide comparative and documentary evidence.

Conduct an on-site fact finding to collect information, interview witnesses and review official files and records.

Request signed statements from all relevant witnesses.

Compile statistical data (i.e. terminations, new hires, etc.) relevant to the issues cited in the complaint.

Review personnel files of complainant and other key employees named in the complaint.

- (f) All investigative data will be evaluated by the EEO Coordinator. Each allegation on the complaint will be identified. Denials, corroborations and defenses to each allegation will be analyzed. The objective is to resolve conflicting issues. This evaluation will verify whether or not the alleged discrimination contained in the complaint exist.
- (g) If the alleged discrimination is not verified, the OMA will issue a summary report of the findings to the complainant, the accused and the director of the affected work unit.
- (h) When an investigation verifies the allegations of a complaint, a summary report of the findings is forwarded to the agency head or his/her designee for final review and resolution. A copy of the findings will also be forwarded to the appointing authority. The agency head's decision is final.

This entire investigatory process **will not exceed 60 days** and the complainant, the accused, and director of the affected work unit will be kept apprised of the status of the investigation and its resolution.

#### **IV. Other Available Options**

- (1) 101 KAR 1:375 allows a state employee to file a grievance that alleges discrimination on the basis of race, color, religion, national origin, sex, disability or age (over 40). The recipient of such grievance is to immediately notify the Cabinet EEO Coordinator in order to comply with Kentucky's Affirmative Action Plan.



When such a grievance is filed, the aggrieved individual shall be notified of the right to a simultaneous, thorough and objective investigation by the EEO staff. A grievance alleging discrimination must be filed **within 30 days of the alleged act** of discrimination. To be valid, the grievance must be filed on an official grievance form.

- (2) KRS 18A.095 (13) allows any classified employee to appeal directly to the state Personnel Board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability or age (over 40).
- (3) The KCHR is the state agency that investigates complaints of discrimination.
- (4) The EEOC is the federal agency that investigates complaints of discrimination.

These options are available to employees, concurrent with an internal complaint investigation. The EEO staff will advise employees of all options available, including time limitations for filing complaints with state and federal compliance agencies.

4-28-04  
Date

Maxwell C. Bailey  
Maxwell C. Bailey, Secretary  
Kentucky Transportation Cabinet

APPROVED AS TO FORM  
AND LEGALITY

Frank Miller, Jr.  
Frank Miller, Jr., Executive Director  
Office of Legal Services

# **STANDARD TITLE VI ASSURANCE**

### **Kentucky Transportation Cabinet Standard Title VI Assurances**

The Kentucky Transportation Cabinet, (hereinafter referred to as the "Recipient") hereby agrees that as a condition to receiving any federal financial assistance from the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d 42 U.S.C. 2000d-4 (hereinafter referred to as the "Act"), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, (49 CFR, Part 21) Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Regulations") and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds race, color, disability, sex, age or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives federal financial assistance from the U.S. Department of Transportation, including the Federal Highway Administration, and hereby gives assurance that it will promptly take any necessary measures to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its Federal-aid Highway Program:

1. That the Recipient agrees that each "facility" and each "program" as defined in subsections 21.23(b) and 21.23(e) of the Regulations will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notifications in all solicitations for bids for work or material subject to the Regulations made in connection with the Federal-aid Highway Program and, in adapted form in all proposals for negotiated agreements.

#### Construction Proposals

The Kentucky Transportation Cabinet, Department of Highways in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the regulations of the Federal Department of Transportation (49 CFR, Part 21), issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the ground of race, color, disability, sex, age or national origin.

#### Agreements For Other Services

Compliance with Regulations: The Consultant shall comply with the regulations of the Transportation Cabinet, Department of Highways relative to non-discrimination in Federally-Assisted Programs of the Transportation Cabinet, Department of Highways (49 CFR, Part 21) which are herein incorporated by reference and made a part of this contract.

3. That the Recipient shall insert one of these nondiscrimination clauses in every contract subject to the Act and the Regulations.
4. That the Recipient shall also insert into every relevant contract a clause stating that contractors will not discriminate against any employee or applicant for employment because of race, color, disability, sex, age or national origin.
5. That where the Recipient receives federal financial assistance to construct a facility, or part of a facility, these assurances shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, these assurances shall extend to rights to space on, over, or under such property.
7. That these assurances obligates the Recipient for the period during which federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, real property or interest therein or structures or improvement thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
8. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation, or the delegated authority, to give a reasonable guarantee that it, other recipients, sub grantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program, will comply with all requirements imposed by or pursuant to the Act, the Regulations and these assurances.
9. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and these assurances.

These assurances are given in consideration of, and for the purpose of, obtaining any and all Federal grants, loans, contracts, property, discounts, and/or other Federal financial assistance extended after the date hereof, to the Recipient by the U. S. Department of Transportation under the Federal-aid Highway Program. The person whose signature appears below is authorized to sign these assurances on behalf of the Recipient.

4-28-04

Date

Maxwell C. Bailey  
Maxwell C. Bailey, Secretary  
Kentucky Transportation Cabinet

APPROVED AS TO FORM  
AND LEGALITY

Frank Miller, Jr.  
Frank Miller, Jr., Executive Director  
Office of Legal Services